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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/404).

The Counter-Terrorism Committee has received the attached third report from Indonesia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 29 January 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Indonesia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Acting upon instructions from my Government, I have the honour to submit herewith the third report on the measures taken by the Government of the Republic of Indonesia pursuant to the provisions of paragraph 6 of resolution 1373 (2001) concerning the fight against terrorism (see enclosure).

I should be grateful if you would have the text of the present letter and its enclosure circulated as a document of the Security Council.

(*Signed*) Mochamad S. **Hidayat**
Ambassador
Chargé d'affaires a.i.

Enclosure

Third report to the Counter-Terrorism Committee (CTC) of the Security Council pursuant to paragraph 6 of resolution 1373 (2001)

Republic of Indonesia

Introduction

Consistent with its efforts to combating the threat of international terrorism, the Government of Indonesia continues to take the necessary and appropriate measures aimed at strengthening the legal infrastructure and enhancing institutional capacities.

Pending the enactment of the Anti Terrorism Bill which has already been submitted to Parliament (Dewan Perwakilan Rakyat-DPR), on 18 October 2002, as an emergency measure, the Government of Indonesia promulgated Government Regulation in-lieu of Law No. 1/2002 on Combating Terrorism, and Government Regulation in-lieu of Law No.2/2002 on the enactment of Government Regulation in-lieu of Law No. 1/2002 and its applicability to the Bali bombing tragedy.

Two Presidential Instructions were also issued in the aftermath of the Bali bombing tragedy, namely Presidential Instruction No. 4/2002 instructing the Coordinating Minister for Political and Security Affairs to formulate a comprehensive policy in combating terrorism, and Presidential Instruction No. 5/2002 instructing the Head of the National Intelligence Agency to coordinate the activities of all the other intelligence agencies. As a follow up to Presidential Instruction No. 4/2002, the Desk for Coordination of Eradicating Terrorism (DCET) was established within the Office of the Coordinating Minister for Political and Security Affairs. This Desk, composed of representatives from the relevant governmental agencies, is tasked to formulate Government policies in combating and eradicating terrorism in a coordinated manner.

Pursuant to Law No. 15/2002 pertaining to Crime on Money Laundering, the Government has also established an independent financial intelligence unit, namely the Indonesian Financial Transaction Report and Analysis Centre (INTRAC), the main task of which is to prevent and eradicate the crime of money laundering.

Regionally, Indonesia and Australia co-hosted a Regional Conference on Combating Money Laundering and Terrorist Financing in Bali in December 2002 with a view to securing a clear view of how countries in the region can work together and track down the financial assets of international crime syndicates. In this regard, on 30 December 2002, the Government took the initiative towards the establishment of a National Coordination Committee on Money Laundering as the focal point for high-level coordination between government and policy-making institutions in preventing and suppressing money laundering.

In addition, the tripartite agreement to share intelligence and cooperate in border control concluded between Indonesia, Malaysia and the Philippines has now been acceded to by Cambodia and Thailand. Indonesia also hosted the ASEAN Workshop on Combating Terrorism

in Jakarta on 20-22 January 2003 to discuss Indonesia's proposals for ASEAN collaboration on post-terrorist attack, and for extradition and/or handing over of terrorist suspects among the 10 ASEAN member countries.

One of the major tragedies, which have attracted great attention from and became the spotlight of the international community, is the Bali bombing on 12 October 2002 - which claimed almost 200 deaths and wounding more than 300 - and the positive steps taken by the Indonesian Police in dealing with the case. The Indonesian Police, in close and intensive cooperation with the Police force from other countries*, was not only able to arrest a significant number of the perpetrators within a relatively short period of time but was also able to further uncover the network and arrest the key terrorists figures who, apparently, were involved in many acts of terrorism/bombings in Indonesia over the last 4 years (1999 to 2002). As such, the bombing cases in Jakarta, Batam, Medan, Bandung and East Java in 2000 were eventually uncovered. This cooperation in dealing with the post terrorist attacks is considered as positive and could become a model to be emulated by other countries. The Bali bombing investigation process therefore underlines the importance of strengthening international cooperation.

1. **Implementation measures**

1.1. **The CTC has agreed on further questions and comments for the consideration of the Government of Indonesia with regard to the implementation of the Resolution, as set out in this section.**

1.2. **Effective implementation of the requirement to prevent the financing of terrorism requires that the legal obligation to report suspicious transactions for banks and financial institutions should extend to all professions engaged in financial transactions (such as lawyers and accountants) and should be subjected to penalties for non-compliance. Could Indonesia please outline any measures it has taken for achieving this objective, or comment on the action it intends to take in this regard.**

Based on Bank Indonesia's Regulation No. 3/10/PBI/2001 and No. 3/23/PBI/2001 concerning "Know Your Customer" (KYC) principle, particularly Article 14, banks are required to submit Suspicious Transactions Report (STR) to Bank Indonesia; while based on Law No. 15/2002 concerning Crime on Money Laundering, particularly Article 13 Paragraph (1), Financial Service Providers (including banks) are required to submit such reports to the Indonesian Financial Transaction Report and Analysis Centre (INTRAC). Financial Service Provider is any person (a natural person or a corporation) that provides services in the financial area, including but not limited to banks, financial institutions, securities companies, mutual fund managers, trust agents, depository and settlement agents, foreign exchange traders, pension funds, and insurance, but do not include accountants, lawyers, and other professionals. The Government is in the process to amend the said Law to, among others, include professionals, such as accountants and lawyers, to submit such reports.

1.3. **According to sub-paragraph 1 (d) of the supplementary report, Indonesia can apply only administrative sanctions against banks which do not comply with the regulations**

* Australia, France, Germany, Japan, the Netherlands, New Zealand, the Philippines, Sweden, U.K. and USA.

issued by the Bank of Indonesia. What administrative or penal sanctions does Indonesia apply to natural persons who fail to report suspicious transactions to the competent authorities? If there are none is it intended to introduce any such sanctions?

Bank Indonesia is not vested with regulatory power to require natural persons to submit suspicious transaction reports to it nor is it authorised to impose sanctions on them for non-compliance in submitting such reports. As the banking authority, Bank Indonesia requires banks to submit suspicious transaction reports to it and may impose only administrative sanctions to them for non-compliance in submitting the reports. The administrative sanctions would be in the form of payment of a sum of money by the banks to Bank Indonesia. Bank Indonesia is not vested with regulatory power to impose penal sanctions to banks because such penal sanctions (in the form of payment of a sum of money to the State Budget and/or in the form of physical punishment) shall derive from the existing laws and shall be decided by the judge in accordance with due process of law.

Under Law No. 15/2002, particularly Article 8, Financial Service Providers (including banks), which are non-compliant in submitting suspicious transaction reports to the Indonesian Financial Transaction Report and Analysis Centre (INTRAC), are subject to penal sanctions in the form of a fine. Further, Article 11 of the said Law stipulates that if the person is unable to pay the fine, as a substitute, that person shall be imprisoned.

1.4. **Effective implementation of sub-paragraph 1 (b) of the Resolution requires a member State to criminalize the wilful collection or provision of funds within that member State by nationals/national entities or by foreigners/foreign entities with the intention or in the knowledge that they will be used for terrorist acts, committed either within or outside the member State. This is also required under articles 2 and 4 of the *Convention for the Suppression of the Financing of Terrorism*, which Indonesia intends to ratify. The acts sought to be criminalized may be committed without any related terrorist act actually occurring or being attempted and the funds used for the financing of terrorism could be both of a legal and an illegal origin. In this context, please elaborate how these acts will be criminalized in the Indonesian anti-terrorism act, which is currently under preparation or through the amendments of existing penal provisions.**

Fund raising or asset accumulation that is intended to be used or with reason to believe that will be used partly or wholly to commit an act of terrorism has been criminalized under Articles 11 and 12 of Government Regulation in-lieu of Law (Perpu) No. 1/2002. Under Article 12, conspiracy, attempts, and accomplice to commit acts of terrorism with particular regard to nuclear, chemical and biological weapons, are also subject to punishment as terrorist acts. Similar provisions are accommodated in the Anti Terrorism Bill already submitted to Parliament.

1.5. **Please clarify what is meant by stating that assets can be seized *"through regional cooperation or other bilateral and multilateral forum"* (page 7 of Doc. S/2002/731).**

Article 44 of Law No. 15/2002 concerning Crime on Money Laundering and Article 43 of Government Regulation in-lieu of Law (Perpu) No. 1/2002 vested the Government with power to undertake regional and international cooperation, through bilateral or multilateral forum, to conduct investigation, prosecution and examination before the court.

Cooperation between the Indonesian law enforcement agencies and its foreign counterparts is intended to prevent and combat the crime of money laundering, which is a trans-national crime. Bilateral arrangements on mutual legal assistance on criminal matters will facilitate the seizure of such assets. Currently, Indonesia has concluded bilateral treaties with Australia, the People's Republic of China and Republic of Korea.

1.6. **Effective implementation of sub-paragraph 1 (c) of the Resolution requires that terrorist funds and other financial assets or economic resources should be frozen without delay and irrespective of their amount or value. Please explain how Indonesia ensures a freezing of such funds etc without delay and irrespective of their amount or value.**

Government Regulation in-lieu of Law (Perpu) No. 1/2002 on Combating Terrorism, particularly Article 29, stipulates that:

- Investigators, public prosecutors or judges have the authority to order banks or financial service providers to freeze the assets of any person believed or with reason to believe to be the proceeds from acts of terrorism and/or crimes related to terrorism, irrespective of the amount or value.

- Orders from investigators, public prosecutors or judges must be given in writing, clearly indicating:

  a. the name and designation of the investigator, the public prosecutor or the judge concerned;
  b. the identity of any person reported by banks or other financial service providers to the investigators, suspect or defendant;
  c. reasons for freezing;
  d. criminal acts, alleged or prosecuted;
  e. location of the assets.

- After receiving the order from the investigator, public prosecutor or judge, banks and financial service providers must immediately freeze the assets.

- Banks and financial service providers shall submit the records of the asset-freezing process to the investigator, public prosecutor or judge within one (1) day as of the date of the freezing.

- The frozen assets must remain at the bank and financial service provider concerned.

1.7. **In the context of sub-paragraph 1 (c) of the Resolution, please outline the procedure that leads to the freezing of terrorist funds etc upon request of foreign authorities.**

Under Government Regulation in lieu of Law (Perpu) No. 1/2002, particularly Article 43, in combating terrorism the Government shall establish international cooperation with other countries in the field of intelligence, police, and other technical cooperation to combat terrorism in accordance with the existing relevant laws.

In this regard, the foreign authority shall address the request in writing to the Indonesian investigator, which, after been reviewed, the investigator will order the bank or the financial

service provider wherein the suspect has the asset, to freeze it. The bank or the financial service provider shall then immediately freeze the asset as explained in paragraph 1.6 above.

1.8. **Effective implementation of paragraph 1 of the Resolution requires the existence of legal provisions or administrative measures that ensure that funds and other economic resources collected by non-profit organisations (e.g. religious, charitable or cultural organisations) are not diverted for other than the stated purposes, particularly for financing of terrorism. Please explain whether such provisions or measures are in place in Indonesia and, if not, how Indonesia proposes to monitor the use of funds etc by non-profit organisations.**

Law No. 15/2002, particularly Article 13, imposes obligation on financial service providers (including banks) to submit suspicious transaction reports to the Indonesian Financial Transaction Report and Analysis Centre (INTRAC). Having reviewed the reports and having found indication of criminal act of money laundering, under Article 26, INTRAC shall submit these reports to the police for further investigation.

Article 2 of the said Law stipulates that terrorism constitutes one of the 15 predicate crimes that trigger money laundering.

Moreover, Article 13 of Government Regulation in lieu of Law (Perpu) No. 1/2002, stipulates that any person who wilfully provides assistance or facilities to terrorists by:

- providing or extending money or goods or other properties to terrorists;
- hiding the terrorist; or
- withholding information related to acts of terrorism,

is subject to imprisonment for a minimum of three years and maximum 15 years.

1.9. **Please outline any existing or proposed legal provisions that criminalize the use of Indonesian territory by Indonesian citizens, foreigners or stateless persons for the purpose of financing, planning, facilitating or committing terrorist acts against Indonesia as well as against other States or their citizens. Effective implementation of sub-paragraphs 2 (d) and (e) of the Resolution requires that such provisions should be incorporated in the penal law of Indonesia.**

Pending the adoption of the Anti Terrorism Bill by Parliament, on 18 October 2002,as an emergency measure, Indonesia enacted Government Regulation in-lieu of Law (Perpu) No. 1/2002 on Combating Terrorism and Government Regulation in-lieu of Law (Perpu) No.2/2002 on the enactment of Government Regulation in-lieu of Law (Perpu) No. 1/2002.

Article 3 (1) of Government Regulation in-lieu of Law (Perpu) No. 1/2002 stipulates that: "this Government Regulation in lieu of Law prevails upon anyone conducting or having intention to conduct crime of terrorism in the territory of the Republic of Indonesia and/or in the territory of other states which also have jurisdiction and have expressed their intention to prosecute the offender".

The said Government Regulation also covers, inter alia, making funds or assets available for acts of terrorism or intention to make funds available for acts of terrorism (Articles 11 and 12); facilitating or supporting terrorists (Article 13); planning and/or directing people to do

acts of terror (Article 14); plotting/conspiring to conduct and supporting acts of terror (Article 15).

As has already been mentioned in the First Report of the Government of Indonesia to the CTC, Law No. 9/1992 on Immigration, particularly Articles 42 (1) and 42 (2), provide steps to be taken against foreigners residing in Indonesia who carry out dangerous activities deemed threatening the general public order or violating existing national laws and regulations. Article 54 provides that anyone who provide safe haven are liable to maximum of six years imprisonment or a fine of 30 million Rupiahs.

1.10. **Effective implementation of sub-paragraph 2 (e) of the Resolution requires that States ensure that persons who participate in the financing, planning, preparation or perpetration of terrorist acts or who support such acts are brought to justice either by submitting the case without undue delay to their respective competent authorities for the purpose of prosecution or by extraditing these persons. This applies without any exception whatsoever and whether or not the offence was committed in their respective territories. Please explain how, in order to comply with sub-paragraph 2 (e), Indonesia would deal with a foreign national who is in Indonesia and has committed a terrorist act outside Indonesia against a State other than Indonesia or against that State's citizens. Is it possible under current or proposed law to prosecute that person in Indonesia, if he or she is not extradited.**

Article 3 (1) of the Government Regulation in-lieu of Law (Perpu) No. 1/2002 stipulates that this Regulation in lieu of Law prevails upon anyone conducting or having intention to conduct crime of terrorism in the territory of the Republic of Indonesia and/or in the territory of other states which also have jurisdiction and expressing their intention to prosecute the offender. According to the Elucidation of Article 3 of this Government Regulation, jurisdictional claim of other states does not automatically bind the Indonesian Government to accept the claim as far as there is no extradition agreement or mutual legal assistance on criminal law, unless both the Indonesian Government and the Government of the State requesting such extradition agree to apply the principle of reciprocity.

Furthermore, Article 3 (2) states that other States have jurisdiction, as mentioned in paragraph (1), if:

a. The crime is committed by a national of the state concerned;
b. The crime is committed against a national of the state concerned;
c. The crime is committed in the state concerned;
d. The crime is committed against a state or government facilities of the state concerned abroad, including the foreign mission or the residence of diplomat or consul of the state concerned;
e. The crime is committed in a violent manner or under threat of violence compelling the state concerned to undertake or not to undertake certain measures;
f. The crime is committed against an aircraft operated by the government of the state concerned; or
g. The crime is conducted on a ship under the flag of the state concerned or on an aircraft registered in accordance to the regulation of the state concerned at the time when the crime was committed.

1.11. **Sub-paragraph 3 (d) of the Resolution requires all States to become parties as soon as possible to all the relevant international conventions and protocols relating to terrorism. The CTC would appreciate receiving information on the progress made by Indonesia with regard to becoming a party to the following conventions and protocols:**

1. **International Convention for the Suppression of the Financing of Terrorism (1999);**

2. **International Convention for the Suppression of Terrorist Bombings (1997);**

3. **Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;**

4. **International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;**

5. **Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988;**

6. **Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;**

7. **Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;**

8. **Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991.**

Progress made by Indonesia with regard to becoming a party to:

a. The International Convention for the Suppression of the Financing of Terrorism (1999), and the International Convention for the Suppression of Terrorist Bombings (1997):

   1. The Inter-agency Forum will further continue its deliberation on the two Conventions with a view to finalizing the process for ratification or accession, including their implications to domestic laws.
   2. The Inter-agency Forum needs to prepare appropriate official translation of the two Conventions.
   3. It is expected that these processes will be finalized in 2003.

b. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973):

   As of now, no initiatives have been taken due to the fact that priority is being given to the process of finalizing the enactment of the national law against terrorism which has already been submitted to Parliament, and of ratifying or acceding to the Convention for

the Suppression of the Financing of Terrorism (1999) and the Convention for the Suppression of Terrorist Bombings (1997).

c. International Convention against the Taking of Hostages (1979):

As of now, no initiatives have been taken due to the fact that priority is being given to the process of finalizing the enactment of the national law against terrorism which has already been submitted to Parliament, and of ratifying or acceding to the Convention for the Suppression of the Financing of Terrorism (1999) and the Convention for the Suppression of Terrorist Bombings (1997).

d. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1998):

Indonesia has signed the Protocol on 24 February 1988. Although the Protocol has yet to be ratified by Indonesia, in practice it has already been implemented under Article 8 of Government Regulation in-lieu of Law (Perpu) No. 1/2002. Appropriate measures will be taken to ratify the Protocol.

e. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988):

As of now, no initiatives have been taken due to the fact that priority is being given to the process of finalizing the enactment of the national law against terrorism which has already been submitted to Parliament, and of ratifying or acceding to the Convention for the Suppression of the Financing of Terrorism (1999) and the Convention for the Suppression of Terrorist Bombings (1997).

f. Protocol for the Suppressions of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988):

As of now, no initiatives have been taken due to the fact that priority is being given to the process of finalizing the enactment of the national law against terrorism which has already been submitted to Parliament, and of ratifying or acceding to the Convention for the Suppression of the Financing of Terrorism (1999) and the Convention for the Suppression of Terrorist Bombings (1997).

g. Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991):

As of now, no initiatives have been taken due to the fact that priority is being given to the process of finalizing the enactment of the national law against terrorism which has already been submitted to Parliament, and of ratifying or acceding to the Convention for the Suppression of the Financing of Terrorism (1999) and the Convention for the Suppression of Terrorist Bombings (1997).

1.12. **The CTC notes that the crimes set forth in Article 7 (1) of the *Convention on the Physical Protection of Nuclear Material* do not seem to be included in the bilateral treaty on extradition what Indonesia has concluded with Australia. Please inform the CTC whether they have been included.**

The Convention has been ratified by Indonesia by Presidential Decree No.49/1986.

Although the offence is not explicitly stipulated in the bilateral Extradition Treaty between Indonesia and Australia, such crime may be extradited on the basis of Article 2 (2) of the Treaty, which states that: "Extradition may also be granted at the discretion of the Requested State for any other act or omission constituting an offence if the offence, according to the laws of both Contracting States, is one for which extradition can be granted."

1.13. **Please confirm that all the offences set forth in:**

- **Article 1 of the *Convention for the Suppression of Unlawful Seizure of Aircraft* and**
- **Article 1 of the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation***

are offences which are extraditable in relation to the Philippines, Hong Kong SARC, Malaysia, Thailand, Australia and to the Republic of Korea under Indonesian law.

Offences set forth in Article 1 of the Convention on Unlawful Seizure of Aircraft and Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are extraditable in relation with the bilateral extradition treaty with the Philippines, the People's Republic of China, Malaysia, Thailand, Australia, and Republic of Korea. With regard to Hong Kong SARC, Indonesia has concluded arrangement on Surrender of Fugitive Offenders.

1.14. **Sub-paragraph 3 (g) of the Resolution requests States to ensure *"that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists"*. Please clarify how Indonesia intends to meet this requirement, in particular in view of Article 5 (1) of Law No. 1/1979.**

Article 5 of Government Regulation in-lieu of the Law (Perpu) No.1/2002 states that acts of terrorism shall be excluded from political crimes, related to political crimes, and politically motivated crimes as stated in Article 5 (1) of Law No. 1/1979. In this regard, acts of terrorism can be subjected to extradition, the enforcement of which will be subject to extradition law in Indonesia.

1.15. **Please provide the CTC with a copy of the draft Indonesian legislation on anti terrorism, once it has been enacted. In this context, the CTC would be interested to know when it is expected to enter into force.**

The Government of Indonesia will provide a copy of the draft Indonesian legislation on anti terrorism, once it has been enacted. At the present time, the Government has submitted the Anti Terrorism Bill to the Indonesian Parliament (Dewan Perwakilan Rakyat-DPR). Pending its adoption, the Government of Indonesia is attaching herewith a copy of the Government Regulation in-lieu of Law (Perpu) No. 1/2002 and Government Regulation in-lieu of Law (Perpu) No. 2/2002. However, due to the time constraint, copies of the aforementioned Government Regulations are in the Indonesian language (Bahasa Indonesia). The Government will provide a copy of the aforementioned Government Regulations in English as soon as they are available.

2. **Assistance and guidance**

2.1 **The CTC is eager to facilitate the provision of assistance and advice in connection with the implementation of the Resolution. It encourages the Government of Indonesia to inform the CTC of any areas in which assistance or advice might be of benefit in taking forward the implementation of the Resolution in Indonesia, or of any areas in which Indonesia might be in a position to offer assistance or advice to other States on the implementation of the Resolution. The CTC maintains a Directory of Information and Sources of Assistance in the field of Counter-Terrorism on which all relevant information on available assistance is posted. It can be found on the CTC's website (www.un.org/sc/ctc). The CTC's Technical Assistance Team is available to discuss any aspect of the provision of assistance and can be contacted as in paragraph 3.1 below.**

2.2. **The CTC notes that the Government of Indonesia has not requested assistance in connection with the implementation of the Resolution.**

2.3. **At this stage the CTC will be focusing on requests for assistance that relate to 'Stage A' matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the Resolution is a matter for agreement between them. The CTC would be grateful to be kept informed of any such arrangements and on their outcome.**

With regard to 2.1, 2.2, and 2.3. pertaining to requests and/or offers for assistance in the efforts to combating terrorism, the Government of Indonesia is presently in the process of preparing a consolidated list of assistance required by the various relevant agencies. This undertaking is being carried out through the Intra-agency Forum mechanism.